IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3321 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

S A MALEK - Respondent(s)

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Appearance :

MR ASHISH H SHAH for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 11/10/2005

ORAL JUDGMENT

In this petition, the petitioner ST Corporation has challenged the legality of the award dated 22nd October, 1996 passed by the Industrial Tribunal, Ahmadabad.

2. The respondent was working as a driver with the ST Corporation. On 18.1.85, when the respondent was driving the bus, he met with an accident with a car in which the driver of the car expired on spot and the bus as well as the car were extensively damaged. For this act of negligence, the respondent was served with a chargesheet dated 31.1.85. Upon conclusion of the inquiry, the petitioner imposed the punishment of reducing the respondent to the minimum of scale with future effect. The respondent challenged the punishment before the Industrial Tribunal by raising the reference. The Industrial Tribunal observed that the respondent was involved in an accident in which one person died. For his act of negligence, therefore, the respondent did commit a misconduct. However, considering the act of delinquency, punishment of reducing the workman to the minimum scale was excessive. The Industrial Tribunal consequently provided for substitution of punishment of withholding of increment for a period of one year with future effect. It may be noted that the Industrial Tribunal also provided for payment of difference in salary as per such a substitution. The petitioner has, therefore, challenged the award passed by the Industrial Tribunal.

3. It is not seriously in dispute that the respondent had caused an accident which resulted into death of the driver of the car. The Industrial Tribunal also did not hold that the accident was not on account of the negligence on the part of the respondent. Considering the gravity of the misconduct, the choice of punishment should have been left with the employer. It is by now well settled that the courts and tribunals would not interfere with the quantum of punishment unless the punishment awarded by the employer is excessive or disproportionate to the proved misconduct so as to shock the conscience of the Court. In the present case, I do not find that any such conclusion was possible. The Industrial Tribunal, therefore, erred in setting aside the punishment imposed by the petitioner.

4. While admitting this petition, no stay was granted to the petitioner. Pursuant to the award of the Industrial Tribunal, therefore, the respondent would have been paid the salary. Therefore, even while setting aside the award of the Industrial Tribunal and allowing this petition by restoring the original punishment imposed by the petitioner on the respondent, it would not be proper

to permit the petitioner to recover the salary already paid pursuant to the award of the Industrial Tribunal.

5. In the result, the petition is allowed in part. The award of the Industrial Tribunal under challenge is set aside. The petitioner, however, shall not seek to recover the salary already paid pursuant to the award of the Industrial Tribunal. With this rider, the petition is allowed. Rule is made absolute accordingly.

(Akil Kureshi, J.)

(vjn)